

Tax Type: **PROPERTY TAX**
Issue: **Charitable Ownership/Use**

HISPANIC HOUSING DEVELOPMENT CORPORATION)		
Applicant)		
v.)	Docket #	95-16-596
THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS)	Parcel Index #	16-27-218-021

The issues in this matter include, first, whether the applicant owned the parcel here in issue during the 1995 assessment year; secondly, whether the applicant is a charitable

organization; and finally, whether this parcel was used for primarily charitable purposes during 1995 or was said parcel leased for profit during that year. Following the submission of all of the evidence and a review of the record, it is determined that the applicant owned this parcel during all of the 1995 assessment year. It is also determined that the applicant failed to establish that it is a charitable organization. Finally, it is determined that this parcel was primarily leased for profit during the 1995 assessment year.

It is therefore recommended that Cook County Parcel Index No. 16-27-218-021 remain on the tax rolls for the 1995 assessment year and be assessed to the applicant, the owner thereof.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the “Department”) in this matter, namely that this parcel did not qualify for exemption for the 1995 assessment year, was established by the admission in evidence of Department’s Exhibit Nos. 1 through 6A.

2. On April 9, 1996, the Cook County Board of Appeals transmitted to the Department an Application for Property Tax Exemption To Board of Appeals concerning the parcel here in issue and the building thereon for the 1995 assessment year. (Dept. Ex. No. 2)

3. On October 10, 1996, the Department advised the applicant that it was denying the exemption of this parcel because this parcel was not in exempt use. (Dept. Ex. No. 3)

4. By a letter dated October 28, 1996, the applicant’s then attorney requested a formal hearing in this matter. (Dept. Ex. No. 4)

5. The hearing in this matter conducted on January 20, 1998, was held pursuant to that request.

6. The applicant acquired the lots which make up this parcel by a warranty deed dated August 31, 1992, and a tax deed dated December 6, 1991. (Dept. Ex. Nos. 2E & 2F)

7. The applicant was incorporated pursuant to the “General Not For Profit Corporation Act” of Illinois, on May 1, 1975, for purposes which among others included the following:

To stimulate, foster, coordinate, plan, improve and encourage the development of modern, safe and healthy housing in areas of substandard housing needs in the State of Illinois and surrounding areas that affect the sound development of the State of Illinois.

8. The mission of the applicant is to stabilize Latino communities by developing, managing, and investing in ventures which promote affordable housing, promote economic opportunity, and enhance the quality of life. (Tr. p. 13)

9. The applicant has developed twenty-three projects over the years. Of those twenty-three projects, eighteen were residential and five were commercial. (Tr. p. 14)

10. When the parcel here in issue was acquired, it was vacant land. The applicant proceeded to build a one-story office building on this parcel which it leased to the United States General Services Administration (hereinafter referred to as "GSA"). GSA, as the leasing agency for the United States, then made this parcel and the building thereon available to the Social Security Administration which used the entire building during the entire 1995 assessment year for a Social Security office. (Tr. p. 15, 16, & 21)

11. During 1995, the applicant owned the building on this parcel and also managed it. (Tr. p. 16)

12. During 1995, the rental income the applicant received from the GSA was \$168,328.00. For 1995, the excess of income over expenses concerning this building was \$10,905.00. (Appl. Ex. No. 2)

13. The applicant does not have any housing units in the area around this building. (Tr. p. 22)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

35 ILCS 200/15-65 provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity;
- (b) beneficent and charitable organizations incorporated in any state of the United States....

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). Based on the foregoing, I conclude that the applicant owned this parcel during the entire 1995 assessment year.

In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court laid down five guidelines to be used in determining whether or not an organization is charitable. Those five guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private

and public charity, and are held in trust for the objects and purposes expressed in its charter; (4) charity is dispensed to all who need and apply for it; and (5) no obstacles are placed in the way of those seeking the benefits. While the applicant alleged that it reduced rents in cases of need in its housing units, it failed to present detailed evidence concerning how the housing units were financed and how those financing arrangements allowed for waiver or reduction of rents. The applicant also failed to provide its sources of income for the organization during 1995. Consequently, the applicant failed to establish that it met guidelines (1), (3), (4), and (5) of the foregoing guidelines. I therefore conclude that the applicant failed to establish by competent evidence that it is a charitable organization.

The record in this case is clear that the applicant purchased this vacant parcel and then proceeded to construct a one-story office building thereon. The applicant then rented the building to the Social Security Administration, an entity of the United States. Illinois Courts have consistently stated the general principle that the use of property to produce income is not a charitable or an exempt use. People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924). *See also* The Salvation Army v. Department of Revenue, 170 Ill.App.3d 336 (2nd Dist. 1988), leave to appeal denied. It should also be noted that the applicant's rental of this parcel and the building thereon to the Social Security Administration resulted in a profit to the applicant of \$10,905.00 for the 1995 assessment year.

35 ILCS 200/15-50 exempts certain property from taxation as follows:

All property of the United States is exempt, except such property as the United States has permitted or may permit to be taxed.

In the case of The Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983), the Appellate Court considered a case where the First Presbyterian Church of Oak Park owned two adjoining parcels of land which it used as a parking lot on Sundays from 9 A.M. to 10 P.M. and which it leased during the rest of the week to the Village of Oak Park, for profit. In that case, the village relied on the decision in Children's Development Center, Inc. v. Olson, 52 Ill.2d

332 (1972). The village contended that the church parking lot should be exempt since it was leased by a religious organization which was an exempt entity to the village, which was also exempt.

In rejecting that argument, the Appellate Court found that the Children's Development Center, Inc. case was distinguishable and stated as follows:

The section 19.7 (charitable) exemption, like that in section 19.2 for religious institutions, turns on the primary use of the property. Unlike those provisions, the exemption provided for municipalities turns solely on ownership of the property.

The Appellate Court then went on to hold that to broaden the municipality exemption to include property only used for municipal purposes and not owned by a municipality would add a new exemption to paragraph 19.6. Paragraph 19.6 was the section where the municipality exemption was found in the Revenue Act of 1939. The Court refused to broaden that exemption.

The cause before me concerns facts which are very similar to the Village of Oak Park case, in that here the applicant is seeking an exemption pursuant to 35 ILCS 200/15-50 which is the exemption for United States property. The United States exemption, like the municipality exemption found in paragraph 19.6 of the Revenue Act of 1939, requires ownership. As in the Village of Oak Park case, the lessee in this case, GSA is not the owner of the property and therefore does not qualify for exemption pursuant to the United States exemption.

The attorney for the applicant contends in his brief that the applicant built and leased the building on this parcel to further its purpose of combating physical deterioration and blight in low income areas and seeing that welfare services are provided in the neighborhoods around this building. The applicant's attorney also contends that in the Children's Development Center, Inc. case the Court determined that it was the primary use after leasing which was the important factor in determining whether or not the property was leased for profit. That proposition is true, however in the Children's Development Center, Inc. case both the lessor and the lessee were determined to be exempt organizations. In this case the applicant has failed to establish that it is a charitable organization. That conclusion plus the fact that the lessee, GSA, is exempt pursuant

to an ownership exemption clearly establishes that the Children's Development Center, Inc. case does not apply to this case. The primary benefit of the lease of this building by the applicant to the GSA is the \$10,905.00 profit that the applicant derived from the lease during 1995.

I therefore conclude that the primary use of this parcel during 1995 was not a use for charitable purposes but rather it was leased for profit to GSA, a United States Government entity.

I therefore recommend that Cook County Parcel Index No. 16-27-218-021 remain on the tax rolls for the 1995 assessment year and that said parcel be assessed to the applicant, Hispanic Housing Development Corporation, the owner thereof.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
October 13, 1998